

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES TELECOM ASSOCIATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION AND UNITED STATES OF
AMERICA,

Respondents.

No. 00-1428

RECEIVED

OCT 30 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

MOTION FOR LEAVE TO INTERVENE

Pursuant to 47 U.S.C. § 402(e), 28 U.S.C. § 2348 and Rule 15(d) of the Federal Rules of Appellate Procedure, Project Telephone Company, Inc. ("Project"), by its attorneys, hereby moves, as a matter of right, for leave to intervene in the above-captioned proceeding. In support of this motion, Project states as follows:

On August 10, 2000, the Federal Communications Commission ("FCC" or "Commission") issued a "Declaratory Ruling," *In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, FCC 00-248 (rel. Aug. 10, 2000) (the "Declaratory Ruling"), in which the Commission provided guidance regarding whether Section 214(e)(1) of the Communications Act requires a common carrier to provide supported services throughout a service area prior to being designated an eligible telecommunications carrier. On October 5, 2000, the United States Telecom Association filed a Petition for Review with this Court alleging

that the Declaratory Ruling is (1) arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law; (2) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (3) without observance of procedure required by law; and (4) unsupported by substantial evidence.

Project is a party in interest to this proceeding because it is an incumbent local exchange carrier that provides service in the geographic area at issue in the South Dakota Public Utilities Commission Order that forms the basis for the Declaratory Ruling. Project actively participated in the South Dakota proceeding through Montana Independent Telecommunications Systems, a trade association that represents the interests of its constituent independent telephone companies, including Project. Project also directly participated in the Commission's proceeding that resulted in the issuance of the Declaratory Ruling. Therefore, as a "party in interest in the proceeding before the agency whose interests will be affected if [the] order of the agency is or is not enjoined, set aside, or suspended" (28 U.S.C. § 2348), Project is entitled to intervene as a matter of right in this case.

Accordingly, Project submits this timely Motion to Intervene in this proceeding and any other proceeding consolidated therewith pursuant to 47 U.S.C. § 402(e), 28 U.S.C. § 2348, Fed. R. App. P. 15 and D.C. Circuit Rule 15(b).

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, a disclosure statement is attached hereto.

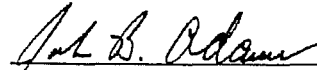
WHEREFORE, Project respectfully requests Leave to Intervene in this matter.

Dated this 25th day of October, 2000.

Respectfully submitted,

Project Telephone Company, Inc.

By:



David Cosson

John B. Adams

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Its Counsel

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ORDER GRANTING PROJECT TELEPHONE COMPANY, INC
LEAVE TO INTERVENE

Upon consideration of the Motion to Intervene of Project Telephone Company, Inc. ("Project") in the above-captioned proceeding, and it appearing that Project has demonstrated sufficient cause for this Court to grant its motion, it is by the Court on this ____ day of October, 2000,

ORDERED that the Motion to Intervene of Project in the above-captioned proceeding is granted.

The Clerk shall serve notice of this Order on the parties hereto.

Judge,
United States Court of Appeals
for the District of Columbia Circuit

Project has no parent companies, subsidiaries, or affiliates whose listing is required by Rule 26.1. Project is a wholly-owned subsidiary of Nemont Telephone Cooperative, Inc. ("Nemont"). Project and its affiliated companies, Nemont Communications, Inc., Sagebrush Cellular, Inc., and Valley Telecommunications, Inc., are either wholly-owned by Nemont or

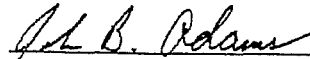
owned by Nemont and one of its wholly-owned subsidiaries. Nemont, as a cooperative, is owned by its subscribers and has issued no shares to the public.

Dated this 25th day of October, 2000.

Respectfully submitted,

Project Telephone Company, Inc.

By:



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CERTIFICATE OF SERVICE

I, John B. Adams, a member of the Bar of this Court, hereby certify that on this 25th day of October, 2000, I have caused copies of the foregoing Motion for Leave to Intervene and corporate disclosure statement of Project, dated October 25, 2000 to be served by first-class mail, postage prepaid upon the following:

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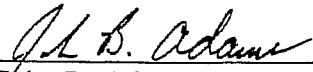
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